IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

Criminal Rev.Application No.331 of 2003

Asstt.Director
Directorate of Revenue
Intelligence ..Petitioner

vs.

1.Indian Express Newspapers
(Bombay) Pvt.Ltd. & Ors. ..Respondents

Shri V.C.Gupte for petitioner.
Mr.Y.S.Shinde, A.P.P. for respondent State.

CORAM: A.M.KHANWILKAR J.
29th NOVEMBER, 2005

P.C.

. Heard counsel for the parties.

2. Rule. Returnable forthwith. As a short question is involved, by consent of the parties, the petition is taken up for final hearing forthwith.

3. This revision takes exception to the judgment and order passed by the Additional Sessions Judge dated 2nd December, 2002 in Criminal Revision Application No.408 of 2000. By the said order the Sessions Court was pleased to allow the revision preferred by the respondents and held that the respondents/accused nos. 1, 2,3, 6 and

7 will have to be discharged in relation to the offence for which they were tried in CC No.530/S of 1987. It is not necessary to advert to all the facts and various aspects on which the court below has proceeded to allow the revision application in favour of the respondents. Suffice it to observe that the court below accepted the case of the respondents essentially relying inter alia on the case of Satish Mehra; 1996(9) SCC 766. The court below has taken into account the material which are extraneous to the one relied upon by the prosecution and tendered in evidence. The legal position has now been settled by the Apex Court in the recent decision of State of Orissa Vs. Debendra Nath Padhi; AIR 2005 S.C.359. The law as it stands is that it is only the material which is produced by the prosecution is to be considered at the stage of discharge and not the one produced by the accused. In other words the principle followed by the court below to record the finding in favour of the respondent so as to discharge them from criminal action cannot be sustained in view of the latest decision of the Apex Court in the case of State of Orissa (supra). On this count alone the judgment under revision will have to be

set aside and the parties are relegated before the Sessions Court for reconsideration of the application afresh on its own merits in accordance with law applying latest decision of the Apex Court as referred to above. The court below will also keep in mind that in the impugned judgment the Court has proceeded to apply the provisions which are inapplicable to the case on hand. The present case is otherwise than the police report to which provisions of sec.244 and 245 of the Code of Criminal Procedure will be applicable. As the matter is being remitted to the Sessions Court all those questions will be considered afresh by the Sessions Court in accordance with law. Revision application is allowed in the above terms. Sessions Court shall dispose of the revision as expeditiously as possible and preferably within 3 months from the receipt of writ of this Court. All questions are left open.